

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CHARLES A. KIRKLAND,)	
)	
Petitioner,)	
)	
v.)	Case No. CV412-007
)	
AL ST. LAWRENCE,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Charles A. Kirkland, a pre-trial detainee held at the Chatham County Detention Center while awaiting prosecution for forgery and fraud charges, *see* attached state court docket sheet, petitions this Court under 28 U.S.C. § 2241,¹ doc. 1, and moves for leave to file it *in forma pauperis* (IFP). Doc. 4. Jailed since May, 2011, he is unhappy with the pace of that case and insists he has not been indicted yet. The state, he contends, is violating his speedy trial, due process, and other rights. Doc. 1 at 1-4. He thus wants this Court to order his immediate release. *Id.* at 3 ¶ D.

¹ He does not cite a particular statute but he challenges the legality of his pretrial detention, rather than detention pursuant to a judgment of conviction, so his petition is properly brought pursuant to § 2241. *Hughes v. Att'y Gen. of Fla.*, 377 F.3d 1258, 1261-62 (11th Cir. 2004).

The Court **GRANTS** his IFP motion (doc. 4) but concludes his petition must be dismissed. Pretrial § 2241 petitions must be exhausted. *Wilkinson v. Dotson*, 544 U.S. 74, 79 (2005) (all habeas corpus actions “require a petitioner to fully exhaust state remedies”); *Thomas v. Crosby*, 371 F.3d 782, 812 (11th Cir. 2004) (Tjoflat, J., concurring) (“Among the most fundamental common law requirements of § 2241 is that petitioners must first exhaust their state court remedies.”). Georgia law

allows pretrial detainees to raise each of these types of claims either during state criminal proceedings or collaterally in a state habeas corpus action. *See Perera v. Miller*, 283 Ga. 583, 662 S.E.2d 544, 544 (Ga. 2008) (noting that criminal defendants can bring speedy trial claim and ineffective assistance of counsel claims during the course of criminal proceedings); *Jackson v. State*, 279 Ga. 449, 614 S.E.2d 781, 783–84 (Ga. 2005) (ruling on speedy trial claim and due process claim based on preindictment delay; claims initially brought in motion for a new trial and reasserted on direct appeal); *Rainwater v. Langley*, 277 Ga. 127, 587 S.E.2d 18, 19–20 (Ga. 2003) (challenging pretrial detention in state habeas petition); *Banks v. Waldrop*, 272 Ga. 475, 531 S.E.2d 708, 708 (Ga. 2000) (holding that challenge to pretrial detention based on contention of improper denial of bail is properly brought in state habeas petition); *McClure v. Hopper*, 234 Ga. 45, 214 S.E.2d 503, 506 (Ga. 1975) (holding that claim based on denial of a timely first appearance may be cognizable in habeas corpus action).

Harvey v. Corbin, 2011 WL 4369828 at * 2 (S.D. Ga. Aug. 12, 2011). As in *Harvey*, Kirkland “has not alleged, and there is nothing in the record to suggest, that he filed a state habeas petition challenging his pre-trial

detention.” *Id.* Therefore, his petition should be **DISMISSED WITHOUT PREJUDICE** so that he may exhaust available state remedies.

SO REPORTED AND RECOMMENDED, this 13th day of February, 2012.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA



CHATHAM COUNTY, GA

Eastern Judicial Circuit of Georgia

Case Details

Input your :

CASE LOOKUP

COURT FORMS

COURT FEES

MAP & DIRECTIONS

JURY SERVICES

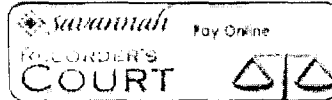
SITE SEARCH

Case Details

Case Information

Court:

Recorders



Case Number:

2011-05-0392-01

Case Type:

C

Judge:

TAMMY STOKES

Date Filed:

5/12/2011 2:28:00 PM

Status:

Disposed - Bind Up Superior

Defendant Information

Name: KIRKLAND, CHARLES A

DIN: X0025947

Gender: M

Race: B

Height:

Weight:

Eyes:

Hair:

Attorney Information

N/A

Case Events

Date	Time	Code	Judge	Action
5/12/2011	10:05AM			

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Charges

Charge	Description	Counts	Severity	Charge Date	Disposition
16-9-1	FORGERY 1ST DEGREE	1		5/12/2011 2:28:00 PM	Bind Up Superior
16-9-20	DEPOSIT ACCOUNT FRAUD	1		5/12/2011 2:28:00 PM	Bind Up Superior
16-8-3	THEFT BY DECEPTION	1		5/12/2011 2:28:00 PM	Bind Up Superior
16-9-121	FINANCIAL IDENTITY FRAUD	1		5/12/2011 2:28:00 PM	Bind Up Superior

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Parties

Type	Name	Address	Disposition
O	MICHAEL ZARAGOZA		-
O	WILLIE POLITE		-

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Proceedings

5/12/2011	10:05AM			Incident Occured
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Case Details

5/12/2011				Defendant Booked
5/12/2011 2:28:00 PM				Case Entered into Court
5/13/2011				First Schedule Date
5/23/2011				Scheduled Court Date

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